

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 04-80857-02
Honorable Lawrence P. Zatkoff

CORNELL SMITH,

Defendant.

ORDER

At a session of said Court held in the
United States District Court, Federal Building,
in the City of Port Huron, County of St. Clair,
State of Michigan on December 27, 2011

PRESENT: HONORABLE LAWRENCE P. ZATKOFF
United States District Court Judge

On September 27, 2011, the Sixth Circuit granted Defendant's appeal of this Court's denial of his motion for reduction in sentence pursuant to 18 U.S.C. §3582(c)(2) and remanded the case to this Court in order "consider whether [Defendant] is entitled to a sentence reduction under the circumstances in light of the Section 3553(a) factors." The Sixth Circuit recently issued the mandate in this matter.

Before the Court makes the determination dictated by the Sixth Circuit, however, the Court has determined that it is necessary and appropriate for the parties to brief the following two issues:

1. Does Defendant have the right to be present and allocute before the Court imposes sentence on Defendant where the Court is deciding Defendant's motion to reduce sentence pursuant to Section 3582(c)(2) following remand by the Sixth Circuit?
2. According to the Sixth Circuit, the appropriate advisory Guideline range in this case is now 135 to 168 months, not 168 to 210 months (as the parties and Probation unanimously agreed when this Court first considered Defendant's 3582(c)(2) motion). On the basis of the Sixth Circuit's conclusion, explain: (a) why Defendant is (or is not) entitled to a sentence reduction under the circumstances of this case, and (b) the duration of the sentence you believe the Court should impose at this time.

The Court hereby ORDERS the parties to file with the Court written responses to the foregoing issues. The parties' responses are due on or before January 20, 2012.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: December 27, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on December 27, 2011.

S/Marie E. Verlinde

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Case Manager
(810) 984-3290